

### REMARKS/ARGUMENTS

Claims 1-10 and 12-21 are pending in the subject application. Claims 1-10 and 12-21 are rejected. Applicants have hereinabove amended 1, 17 and 18. Accordingly, upon entry of this Amendment, claims 1-10 and 12-21, as amended, will be pending and under examination.

Applicants maintain that the amendments to claims 1, 17 and 18 do not raise any new matter, and that the claims, as amended, are fully supported by the specification as originally filed. Support for the amendments to claims 1, 17 and 18 is found, *inter alia*, in the specification as follows: page 9, lines 7-13, page 10, lines 6-7, and page 10, line 16 to page 12, line 15.

In making these amendments, applicants neither concede the correctness of the Examiner's rejections in the May 13, 2009 Non-Final Office Action, nor abandon the right to pursue in a continuing application embodiments of the invention no longer claimed in the subject application.

In view of the arguments set forth below in this Amendment, and claim amendments hereinabove, applicants maintain that the Examiner's rejections made in the May 13, 2009 Non-Final Office Action have been overcome, and respectfully request that the Examiner reconsider and withdraw same.

#### Claim Rejections Under 35 U.S.C. § 112, First Paragraph (Enablement)

The Examiner states that claims 17-21 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with

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which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Specifically, the Examiner alleges the specification does not provide enablement for (1) a method that accumulates on a damaged tissue site that does not expose or comprise endothelial cells; and (2) a method that does not administer the carrier to a site of tissue damage.

In response to the Examiner's rejection to claims 17-21, but without conceding the correctness thereof, applicants note that claims 17 and 18 have been amended. Amended claims 17 and 18 now recite "damaged endothelial cell site." Hence, the Examiner's rejection to claims 17-21, as amended, is obviated.

In view of the above remarks, applicants maintain that claims 17-21, as amended, satisfy the requirements of 35 U.S.C. § 112, first paragraph, and request that the Examiner reconsider and withdraw this ground of rejection.

#### **Claim Rejections Under 35 U.S.C. § 102(b) (Novelty)**

The Examiner states that claims 1-10 and 12-21 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated over JP 07-089874 to Kazuo et al. ("Kazuo et al."), as evidenced by Dictionary.com (<http://dictionary.reference.com/browse/tinge>).

In response to the Examiner's rejection to claims 1-10 and 12-21, but without conceding the correctness thereof, applicants note that claim 1 has been amended.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. In the instant case, amended claim 1 now recites "[a] carrier with a non-cationic surface, which can accumulate on a damaged endothelial cell site of a tissue comprising endothelial cells, wherein the carrier comprises a phospholipid having a phosphatidylcholine group, a

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sterol, and 1,5-dipalmitoyl-L-glutamate-N-succinic acid ("DPEA")." Kazuo et al (as evidenced by Dictionary.com) does not expressly or inherently describe, for example, does not expressly or inherently describe "the carrier comprises a phospholipid having a phosphatidylcholine group, a sterol, and 1,5-dipalmitoyl-L-glutamate-N-succinic acid ("DPEA")," and hence fails to describe each and every element as set forth in claims 1-10 and 12-21, as amended.

In view of the above remarks, applicants maintain that claims 1-10 and 12-21, as amended, satisfy the requirements of 35 U.S.C. § 102(b), and request that the Examiner reconsider and withdraw this ground of rejection.

**Claim Rejections Under 35 U.S.C. § 102(e) (Novelty)**

The Examiner states that claims 1-10 and 12-16 rejected under 35 U.S.C. § 102(e), as allegedly anticipated over US 6,949,663 to Tsuchida et al. ("Tsuchida et al.").

In response to the Examiner's rejection, but without conceding the correctness thereof, applicants note that claim 1 has been amended. As stated above, claim 1 now recites, in part, "the carrier comprises a phospholipid having a phosphatidylcholine group, a sterol, and 1,5-dipalmitoyl-L-glutamate-N-succinic acid ("DPEA")." Nowhere does Tsuchida et al. expressly or inherently describe, for example, "the carrier comprises a phospholipid having a phosphatidylcholine group, a sterol, and 1,5-dipalmitoyl-L-glutamate-N-succinic acid ("DPEA")." Thus, Tsuchida et al. fails to describe each and every element as set forth in claims 1-10 and 12-16, as amended.

In view of the above remarks, applicants maintain that claims 1-10 and 12-16 satisfy the requirements of 35 U.S.C. § 102(e), and request that the Examiner reconsider and withdraw this ground of rejection.

**Claim Rejections Under 35 U.S.C. § 112, Second Paragraph (Indefinite)**

The Examiner states that claims 1-10 and 12-21 are rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Specifically, the Examiner states that the recitation of "a carboxylic type lipid" in pending claim 1 is indefinite since the specification does not define this term and it is not apparent how similar or different "a carboxylic type lipid" is to a carboxylic lipid.

In response to the Examiner's rejection, but without conceding the correctness thereof, applicants note that claim 1 has been amended. Claim 1, as amended, no longer recites "a carboxylic type lipid." Hence, the Examiner's above rejection to claims 1-10 and 12-21 is moot.

**Claim Rejection Under Obviousness-Type Double Patenting**

The Examiner states that claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of Tsuchida et al.

In response to the Examiner's above rejection, but without conceding the correctness thereof, applicants respectfully point out that claim 1 has been amended. Moreover, applicants respectfully traverse.

Applicants respectfully point out that claims 1-10, as amended, are patentably distinct from claims 1-8 of Tsuchida et al. since amended claims 1-10 of the subject application do not encompass the same limitations of claims 1-8 of Tsuchida et al. See *supra*, p. 9.

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In view of the above remarks, applicants request that the Examiner reconsider and withdraw this ground of rejection.

**Conclusion**

Applicants maintain that claims 1-10 and 12-21, as amended are in condition for allowance. Accordingly, allowance is respectfully requested.

If a telephone conference would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone her at the number provided below.

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Respectfully submitted,

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